

Victims Of Crime In Ontario

A Vision For The 1990's



The Advisory Board on Victims' Issues

June 1991

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This discussion paper could not have been written without the invaluable help of Dina Alexis and Lucy Yuen. Dina's writing skills and Lucy's secretarial and administrative expertise combined to produce a superlative document.

Special thanks and a debt of gratitude must be extended to all the members of the Advisory Board on Victims' Issues. This group of twenty-three individuals succeeded in a very short time to reach consensus on a number of very important issues. Subsequent to the meetings, each member was very active in reviewing the discussion paper and initiating changes which has helped to produce the document you see before you today.

Pat Evershed deserves a special note of thanks for coordinating the meetings and dealing with the administrative detail necessary to produce a document.

We are particularly indebted to the staff of the British Columbia Compensation Board, the Commission on Victim Services of Connecticut, and the Violent Crimes Compensation Board of New Jersey who took time out of busy work schedules to assist us in our study of different models of compensation.

Linda Tarrant, our facilitator, instilled a high level of professional excellence without which the success of the project would not have been possible.

*The Honourable Howard Hampton
Attorney General for Ontario
Ministry of the Attorney General
720 Bay Street, 11th Floor
Toronto, Ontario
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Dear Mr. Minister:

On November 21, 1990, the Criminal Injuries Compensation Board was pleased to be asked by yourself to undertake a consultative process with members of the victim community, government and ourselves to discuss a broad range of victims' issues.

I would like to thank you for allowing the Criminal Injuries Compensation Board to determine the process for this task.

The discussion paper is now finalized and many people, many thoughts and many issues have given birth to the recommendations contained in the paper.

Acknowledgement and appreciation for the many hours spent on the preparation and finetuning of this discussion paper should go to Mr. Jules Bloch, Ms. Dina Alexis, Mrs. Lucy Yuen, Mrs. Pat Evershed and Ms. Patricia Hoole.

Thanks also to all the members of the Advisory Board whose expertise and communication made the task possible.

Sincerely,

Wendy L. Calder

(Mrs.) Wendy L. Calder
Chairman

*The Honourable Howard Hampton
Attorney General for Ontario
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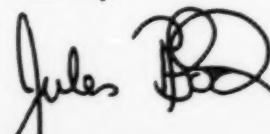
Dear Mr. Minister:

It is with great pleasure and honour that the Advisory Board on Victims' Issues is able to report that we have fulfilled our mandate by submitting to you a copy of our discussion paper entitled "Victims of Crime in Ontario: A Vision for the 1990's." This document represents a new approach and understanding of Victims' Issues in the Province. We believe this document reflects the point of view that "The justice system does not begin, nor does it end at the courtroom door."

Effective legislation in the 1990's involves a process which includes the widest spectrum of ideas possible. By using a participatory model which involved an Advisory Board drawn from members of the victim community, and other government agencies and departments, we were able to address problems and issues at a grass roots level. To create change or re-define a vision it is essential to ask the "grass roots" or the natural constituency to play an essential role in reviewing policy objectives.

Within the body of our document, we have enclosed a tear off sheet which will allow for comments and responses from those who did not officially participate in the formulation of this document. Throughout the process the Advisory Board has been clear in its desire to have the discussion paper widely distributed so that the consensus reached between a group of extremely varied individuals can be examined in a larger context. Our goal is to effect changes in the way government and its agencies have viewed victims of crime and their victimization.

Sincerely,



Jules B. Bloch
Vice-Chairman



PART I: EXECUTIVE SUMMARY AND RECOMENDATIONS

1) EXECUTIVE SUMMARY

The Advisory Board on Victims' Issues undertook the important task of reviewing the current status and role of victims of crime in Ontario, in relation to:

- 1) the role of the victim in the "system";
- 2) the nature of victims' rights;
- 3) compensation schemes in selected North American jurisdictions; and,
- 4) the accessibility of victims' services.

1. THE ROLE OF THE VICTIM IN THE "SYSTEM"

A review of the victim's participation in the "system" included the criminal justice system and other institutions which can assist the victim such as hospitals, Crown Attorneys, the Criminal Injuries Compensation Board, Police, Correctional Services, Judges, the Office of the Official Guardian and other support services.

The Advisory Board members agreed that victims have a minimal role at best in the criminal justice system. In fact, victims face a "double jeopardy" in that they are required to participate in investigations and trials at considerable financial and emotional cost and sometimes at the risk of actual intimidation by the accused.

The victim's participation in the entire "system" beyond the judicial sphere, has further contributed to the secondary victimization of the victim. There must be clear recognition of both the needs of victims of crime, and of the desirability of directing all participants of the criminal justice system to consider these needs to a greater extent than is now the case. Victims should no longer be treated as "invisible" but as legitimate participants in many facets of the "system."

The Advisory Board also recommended that institutions such as hospitals have a duty of care to report incidents of victimization to the appropriate authorities and not to protect the institutions. (**Recommendation 1**)

2. THE NATURE OF VICTIMS' RIGHTS

The Advisory Board believes that victims' rights in the criminal justice system are based on the fundamental rights enshrined in s. 7 and s. 15 of the *Charter of Rights and Freedoms* which guarantees that

s. 7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

s. 15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

In order to ensure "equal benefit and protection under the law", and "security of the person", a victim's social and economic disadvantages need to be recognized and acknowledged by the system. There must be an understanding of the full reality of the crime and the full extent of the victimization from all participants in the system.

The Advisory Board recommends a Charter-driven review of the justice system that is victim-centred. This would allow the government to redirect and provide for the needs of victims who are affected by the justice system. The process of review may include the adoption of a proposed list or model of Victims' Rights and Guiding Principles. (Appendix "E") Furthermore, victims who are also witnesses should be compensated for any costs incurred as a result of being a witness. Victims who are particularly vulnerable should be entitled to assistance either by counsel or some other advocate. (Recommendation 2)

In the 1990's, it should be evident to society that victims have a key role and a direct investment in the justice system. The legal process should protect and benefit victims as well as serve the public interest. The interpretation of criminal laws should recognize that equalities and rights for victims are guaranteed under the *Charter of Rights and Freedoms*. It is dependent upon the government through legislation to ensure that all citizens including victims of crimes, receive equal benefit, equal protection, and equal security of the person.

3. A COMPARISON BETWEEN ONTARIO'S COMPENSATION SCHEME AND THREE OTHER NORTH AMERICAN JURISDICTIONS

The Advisory Board selected for review and comparison three different models of compensation and victims' services in New Jersey, British Columbia and Connecticut. The analysis compared the Ontario Board with the other boards in terms of:

- Legislation;
- Limitation periods for filing applications;
- The nature of compensation;
- Victim reporting to police authorities.

LIMITATION PERIODS FOR FILING APPLICATIONS

The Advisory Board recommended that the 1968 time limit for filing an application be changed to allow applications to be filed for acts of sexual violence, violence against children and wife assault. (**Recommendation 3**) The time limit for filing an application with the Criminal Injuries Compensation Board should be expanded from one year to two years from the date of the occurrence of injury or death. This recommendation accounts for the fact that the judicial process requires about 12 months before a case is disposed of in criminal court.

The Advisory Board also recommends that a policy directive be drafted to allow an application to be filed by a 16 or 17 year old who is not under the care of a parent or legal guardian. (**Recommendation 3**) For the purpose of time limits, however, the limitation period will not be deemed to commence until the applicant reaches the age of 18. This recommendation addresses the problem faced by many abused street children who are not under the care of a legal guardian and therefore, do not have someone to file an application on their behalf before the Board.

VICTIM REPORTING TO AUTHORITIES/LEVEL OF PROOF REQUIRED

According to a strict reading of the statute governing the Criminal Injuries Compensation Board, the applicant may be denied compensation if he/she has failed to *promptly report* to the police the act or omission resulting in the injury or death and/or failed to reasonably cooperate with authorities. The Board has ruled that a police report or, in fact, reporting the incident at all, is not a prerequisite to having an application accepted and an award made. The Board does, however, consider the degree of cooperation of the victim with the criminal justice system under the circumstances in determining the amount of the award. In conjunction with these relevant factors, the Board also considers the "behaviour" of the applicant which directly or indirectly contributed to the death or injury of the victim.

The Advisory Board recommends that victims no longer be required to "promptly report" the incident of injury or death and that policy directives be drafted for the

Board on how to treat the behaviour of the victim in relation to the occurrence of the crime. **(Recommendation 6)** These recommendations recognize that it is unreasonable to expect that in all cases a victim of sexual assault, for example, will report the crime to the police. In addition, a victim's behaviour, such as the lifestyle of a prostitute who is abused by a client, should not automatically bar that victim from receiving compensation.

4. THE ACCESSIBILITY OF VICTIMS' SERVICES

The Advisory Board found that victims of crime in Ontario have access to a diverse group of victim services which are offered by different levels of government, private organizations and non-profit groups. There is a demand to both expand and improve these existing services to meet the needs of all victims, and to create a central coordinating or referral agency.

ACCESS AND EFFICIENCY OF THE CRIMINAL INJURIES COMPENSATION BOARD (CICB)

The Advisory Board endorses a recent Stakeholder Survey of the CICB in which the Board was told that it must improve its access and efficiency if it hopes to improve its level of applicant service. In order to improve access to the CICB, the Board must coordinate information with other sources, increase public awareness about the Board, conduct outreach in areas such as culture, language, literacy skills, etc., develop Charter driven criteria for the recruitment of Board members, and train referral sources such as police. **(Recommendation 8)** Similarly, the efficiency of the Board may be improved if legislative changes are made, operational and administrative enhancements are introduced, and a media/public relations campaign is launched. **(Recommendation 9)**

THE ROLE OF GOVERNMENT AND THE COMMUNITY IN THE COORDINATION OF VICTIMS' SERVICES

The Advisory Board concluded that the Criminal Injuries Compensation Board is not in a position to become the Province's referral agency for victims' services. Therefore it is recommended that the coordination and rationalization of resources be accomplished through a Provincial Interministerial Committee. Funding for government-based and community-based victim services would be received from the Province. The government would then interact with the community to create a forum for joint decision-making and planning. **(Recommendation 10)**

VICTIM'S ASSISTANCE/PSYCHOLOGICAL CONSEQUENCES OF VIOLENCE AGAINST WOMEN AND CHILDREN

The Advisory Board suggests that those serving victims identify what victims' needs are whether they be legal, medical, psychological, spiritual, etc. The goal is

to identify those supports which will help victims. Some victims who experience severe financial constraints require interim financial assistance in the form of interim compensation payments. While s. 14 of the *Act* does provide for the payment of interim awards in respect for maintenance, medical expenses and funeral expenses, this section does not specifically award for counselling services which may be needed in the short term.

The Advisory Board therefore recommends that a Policy Directive be developed which would allow the Board to grant interim awards for counselling services in the short term, especially for disempowered victims (eg. women, children, and the elderly). In addition, victims' services should be expanded and new services developed whose goal is to heal and support those who have been victimized. (Recommendation 12)

TRAINING OF SERVICE PROVIDERS

The Advisory Board recognizes that service providers and professionals have a duty to be informed about victims' services. Service providers need to ensure that staff members who will assist the child and family through the CICB process are educated and trained. In addition to the Office of the Official Guardian, Children's Aid Societies and a few Community Legal Clinics which bring applications before the Board, there is a role for children, women and youth advocacy groups to act as advocates who could also be placed in community-based organizations. Although people should have access to legal counsel if they need it, there is a greater need to provide additional victim services other than more legal aid/lawyers.

THE BALANCE BETWEEN THE VICTIM'S RIGHT TO PRIVACY AND THE RIGHT OF THE PUBLIC TO BE INFORMED

The Advisory Board addressed the issue of whether there should be a limitation of access to information surrounding compensation awards and public hearings. For instance,

- Should the amount of the award granted and the victim's name be identified?
- Is there a duty on the part of the Press/media to report information to the public?
- What options should be available for victims who want in camera hearings?

Pursuant to s. 12 of the *Act*, all hearings are to be public except where the Board believes it is necessary to hold a hearing in camera such as in the case of a sexual offence or child abuse. Furthermore, s. 13 of the *Act* allows the Board to make an order prohibiting the publication of any report based on the evidence given at a hearing.

The Advisory Board does not unanimously support the CICB's strict application of s. 12 of the Act on "in camera" hearings because it is believed that there is a lack of accessible information on the process and the decisions rendered. Although the Advisory Board agrees that certain victims, such as sexually abused children, should receive in camera hearings, some members suggest that victims would benefit if supporting victims' organizations had access to all information resulting from the hearing. It is recommended that a further review be undertaken to clarify the policies and procedures surrounding both in camera hearings and public hearings. (Recommendation 13)

CONCLUSION:

This document presents a vision for victims' rights and services in the Province. To ensure that as many voices as possible are heard and have input, we have included a tear off sheet asking the reader to answer three questions:

- 1) *What three major issues/recommendations would you like implemented/acted upon?*
- 2) *What other issues/recommendations were not addressed which should also be acted upon?*
- 3) *What major issue/recommendation did you disagree with in the report?*

This type of feedback will help to prioritize the recommendations of this Advisory Board and involve as many community organizations, government representatives, boards and tribunals, and victims' advocates as possible in the preparation of the final list of recommendations.

II) RECOMMENDATIONS

THE ROLE OF THE VICTIM IN THE SYSTEM

RECOMMENDATION 1

Caregivers in institutions such as hospitals have a duty of care to report incidents of victimization and not to protect the institutions.

THE NATURE OF VICTIMS' RIGHTS IN ONTARIO

RECOMMENDATION 2

A Charter-driven review that is victim-centred, of each process in the justice system should be undertaken. This would provide the government an opportunity to redirect and provide for the needs of victims who participate in the justice system.

This Charter review would include:

- a) all legislation including all related regulations, policies, procedures, practices and guidelines in the Province of Ontario to ensure that victims are afforded "equal protection and benefit" of the law and "security of the person" as noted by s. 15 and s. 7 of the Charter respectively;
- b) current practices and policies for appointments, hiring and training of all criminal justice participants and all those involved in quasi-judicial processes;
- c) creating protocols for dealing with victims of crime in the system;
- d) the government's responsibility in terms of security of the person pursuant to Section 7 of the Charter; to create certain rights for victims and obligations for government. This process may take the form of a list of Rights in Appendix "E" with the exception of #4, #6 and #8 which should be treated as Guiding Principles. It is also recommended that s. 15 of the Charter be recognized as reinforcing the responsibility on government to ensure that these Rights and Guiding Principles are followed for all participants in the system;

-
- e) Other Issues to be reviewed:
 - Victim/Witness Financial Assistance

A victim who is also a witness, should be compensated for loss of wages, travel expenses and/or any other costs incurred as a result of being a witness. Funding implications need to be reviewed in order to provide for these costs;

A victim who is especially vulnerable should be entitled to counsel. The issue of whether there should be a tripartite system which gives victims full standing in criminal court or full intervenor standing should be examined further.

A RANGE OF ISSUES REGARDING COMPENSATION FOR VICTIMS

RECOMMENDATION 3

Limitation Periods for Applications to CICB

- a) Maintain the 1968 time limit for filing an application with an exception for acts of sexual violence, violence against children and wife assault. For these types of crime, there should be no time limits.

Note: The Consultation Group on the Reform of the *Limitations Act* has recently recommended that all limitation periods in the area of sexual assault for offences committed in relationships of trust or dependency, such as those involving parents and guardians, be removed.

- b) Amend s. 6 of the Act to expand the time limit for filing an application from one year from the date of injury or death to two years plus Board discretion from the date of injury or death.
- c) Develop a policy directive to allow an application to be filed by a 16 or 17 year old who is no longer under the care of a parent. However, for the purpose of time limits the limitation period will not be deemed to commence until the applicant reaches the age of 18.

RECOMMENDATION 4

Definitions

- a) Amend s. 1 (f)(a) of the Act, the definition of "Spouse", to include "Same Sex Spouse" which is consistent with the *Human Rights Code* and reflects current values of society.

-
- b) Amend s. 1 (d) of the *Act*, the definition of "injury", to include the sequela of a criminal threat to do bodily harm. Further review is required.

RECOMMENDATION 5

Categories of Victims

Presently, there are three categories of victims namely, police, good samaritans and victims under the *Compensation for Victims of Crime Act*. Pursuant to s. 19 (5) of the *Act*, police officers and good samaritans are potentially entitled to damages based on common law standards rather than those limitations imposed by the *Act*.

A consensus among the Advisory Board was not reached on the issue whether each category of victim should receive equal compensation limits. As a result, the Advisory Board recommends that this issue be reviewed further.

RECOMMENDATION 6

- a) Amend s. 17(1) of the *Act* to remove "including any behaviour of the victim" and to provide policy directives to describe the meaning of "including any behaviour." These directives must be Charter-based.

s. 17(1) - In determining whether to make an order for compensation and the amount thereof, the Board shall have regard to all relevant circumstances, (including any behaviour of the victim) that may have directly or indirectly contributed to his injury or death.

- b) Amend s. 17(2) of the *Act* by removing "prompt reporting".

s. 17(2) - The Board may, in its discretion, refuse to make an order for compensation or order a reduced amount of compensation where it is satisfied that the applicant has refused reasonable co-operation, or order a reduced amount of compensation where it is satisfied that the applicant has refused reasonable co-operation with, (or failed to report promptly the offence) to, a law enforcement agency.

In considering a claim for compensation the Board may include the degree of cooperation with the criminal justice system and with the CICB as one of the factors used to determine the amount of the compensation award.

In making its determination the Board should give due consideration to the age and circumstances of the victim, the nature of the crime and any legitimate fears the victim may have.

RECOMMENDATION 7

- a) Amend the *Act* to allow the CICB to award for claims of Grief and Sorrow and Pain and Suffering as more than symbolic awards, and to include an assessment on the real economic costs of victimization.
- b) Social assistance should not be reduced if a victim has received a CICB award which would then not be treated as income.

ACCESSIBILITY OF VICTIMS' SERVICES

RECOMMENDATION 8

In order to improve public awareness and accessibility to the CICB, the following is recommended:

- Coordination of information with other sources;
- Outreach in areas such as culture, language, literacy skills, etc.;
- Implement a 1-800 number which provides direct access to the CICB and publish the number in the front cover of the phone book;
- Develop Charter-driven criteria for selection and training of Board members and staff to ensure that they have a demonstrated understanding of
 - psychological trauma, etc.
 - victim vulnerability
 - gender specific/discrimination, violence against women, children, the elderly and family violence
 - wider appreciation of victimization
 - recognition of people with special needs
- Up-date and simplify application forms and ensure wider distribution to the community (i.e. shelters, victim-witness assistance programs, etc.);
- Train referral sources such as police, etc.

RECOMMENDATION 9

In order to increase the efficiency of the Board the following is required,

- a) Review and Amend the *Act* and other relevant legislation to:

- require police to provide the CICB with any information pertaining to the occurrence before the Tribunal, subject to the requirements of the *Freedom of Information and Protection of Privacy Act*;

- allow the CICB to hold a single member hearing on the first instance based solely on the documents unless the victim requests otherwise;

- conduct a Charter review on whether or not the release of information should be shared between both the offender and the victim.

b) Operational and Administrative Enhancements:

- proper resources and their utilization (e.g. technology)
- speed-up turn-around time (standards)
- operational review of Board
- upgrade the file tracking system to determine the status of a case on a computer terminal
- process cheques by CICB instead of Ministry
- send out extension forms along with application forms

c) Improvement of Client Relations:

- ongoing user evaluation/feedback
- media/public relations strategy

RECOMMENDATION 10

The CICB should not be in a coordination role for province-wide victim services. However, there is a need for someone to rationalize and coordinate resources once the need for additional services has been met. It is, therefore, recommended that:

- 1) funding for government-based and community-based victim services come from the Province and that government interact with the community to create a forum for joint decision-making and planning; and
- 2) coordination should be accomplished through a provincial interministerial committee to rationalize resources. The current interministerial committee on wife assault could be used as a model or an overall committee could be formed to consider all issues.

RECOMMENDATION 11

There is an obligation on the state to create a more equitable system through the up-date and maintenance of a viable Child Abuse Register so that institutions can check if they are hiring persons who have abused. Extensive training should be

available to those who are responsible for maintaining the Register. There should also be fair access to the Register and built-in safeguards for affected parties.

RECOMMENDATION 12

a) The Criminal Justice System must be victim/accused balanced and must allow for victims' special needs. (Refer to Appendix "E" for Proposed Rights and Guidelines)

b) Victims' Services must be expanded and new services developed whose goal is to heal and support those who have been victimized.

The level of Victim Assistance must be increased to accommodate, for example:

- non-verbal (infant, disabled, etc.) victims who do not fit into the "perfect witness" role;
- victims with special needs such as disabled persons who require wheelchairs to ensure victim-centred access;
- psychological/emotional needs of each victim as an individual.
This initiative would remove barriers which would keep people from participating in the process;
- issues of age. For example, children who are victims of sexual abuse have very different needs than other victims;
- issues of culture and language. Victims who speak another language or have a different culture require special victim assistance.

c) Develop a Policy Directive to supplement s. 14 of the *Act* to allow the Board to grant interim awards for counselling services in the short term, especially for disempowered victims (eg. women, children, elderly).

RECOMMENDATION 13

Clarify the policies and procedures surrounding both in camera hearings and public hearings.

PART II: THE REPORT

1) THE APPOINTMENT OF THE ADVISORY BOARD ON VICTIMS' ISSUES AND METHODOLOGY

On November 21, 1990 the Attorney General of Ontario, the Honourable Howard Hampton, issued a Statement to the Legislature entitled *"New Resources and Initiatives to Deal with Court Delay"*. As one of the initiatives outlined to develop a more responsive and efficient justice system, the Attorney General asked the Criminal Injuries Compensation Board to:

"Undertake a Consultative process with representatives of the community and Government. They will review current Legislation regarding compensation, and examine other jurisdictional models to identify alternative ways in which the justice system responds to victims of crime. The process will be determined by the Chair of the Criminal Injuries Compensation Board and will commence shortly."

The Criminal Injuries Compensation Board approached this review of Victims' rights and services in Ontario with a novel and dynamic approach which involved representatives from organizations within the victim community, victims, the Ministry of the Attorney General, the Ontario Provincial Police, the Crown Law Office, the Ministry of the Solicitor General, the Ontario Women's Directorate and the Office of the Official Guardian, the Chair and Vice-Chair of the Criminal Injuries Compensation Board (CICB). The goal was to choose a group of individuals who represented a wide range of issues within the victim community.

The Advisory Board convened a series of meetings wherein a consensus was achieved on a philosophical basis from which to view the issue of victims' rights and services in the Province. With this new understanding, the participants reviewed the "Victim's world" as they found it and achieved consensus on recommendations outlining how this "world" should be improved.

The scope of the discussion moved beyond a range of issues regarding compensation and included the nature of victims' rights in Ontario and the accessibility of victims' services.

With the aid of a facilitator, this Advisory Board set about discussing issues and identifying areas for reform regarding victims' rights and services in Ontario. As part of this process, two members of the Advisory Board visited three North American Compensation Boards in New Jersey, Connecticut, and British Columbia to compare different compensation schemes and approaches to victims' services.

This document presents a vision for victims' rights in the Province. To ensure that as many voices as possible are heard and have input, we have included a tear off sheet asking the reader to answer three questions:

-
- 1) What three major issues/recommendations would you like implemented/acted upon?
 - 2) What other issues/recommendations were not addressed which should also be acted upon?
 - 3) What major issue/recommendation did you disagree with in the report?

This type of feedback will help to prioritize the recommendations of this Advisory Board and involve as many community organizations, government representatives, boards and tribunals, and victims' advocates as possible in the preparation of the final list of recommendations.

II) THE ROLE OF THE VICTIM IN THE "SYSTEM"

To understand the position of the victim in the justice system it is important to consider a series of events, from the commission of an offence to the completion of the offender's sentence, and finally, the emotional assistance and financial compensation given to the victim. The "system" includes the criminal justice system along with other institutions which are available to assist the victim such as hospitals, Crown Attorneys, police, Correctional Services, judges, the Office of the Official Guardian, the Criminal Injuries Compensation Board, and other support services.

The justice system does not begin, nor does it end at the courtroom doors.

Although the criminal process begins when an offence or an incident of crime occurs, only about 40 percent of all crime is reported to police.¹⁾ Once the decision not to report is made, victims discover that the only other avenue of receiving compensation from the system is to file a civil suit.

The victim may choose to report the crime, or the incident may be reported by a third party to the police. The decision to report the crime may be the only decision the victim will make. Once the police attend at the scene of the crime they usually assume the responsibility for the investigation, the apprehension of the suspect and any charge that is laid. An important responsibility of the police is apprehending the offender. The victim, however, may also have immediate needs which must be addressed. For example, victims of sexual assault require emotional support, medical help and advice about the consequences of reporting the incident. Under the *Police Services Act, 1991* it is also the duty of police officers to provide assistance for victims of crime and to understand their needs. One of the principles of the legislation underlines the "importance of respect for victims of crime and understanding of their needs." Police officers are provided with training regarding the needs of victims of crime and some police forces have specialized victim assistance programs.

Sexual assault crisis centres can provide essential information to these victims if they are contacted at the appropriate time. The Government of Ontario recently addressed the sporadic service in this area by allocating \$20.3 million to improve services of which, \$5 million will fund sexual assault centres. In addition to the victim's need for services to assist them in dealing with the immediate consequences, they require information on the next step in the judicial process.

At the investigation stage of the process, the police are responsible for conducting an investigation which often requires the cooperation of the victim and other witnesses. This may place additional demands on victims. For example, a sexual assault victim may not be emotionally prepared to view a line-up of suspects which could include her attacker and she may feel intimidated by the system which requires her co-operation.

¹ Statistics Canada, "Patterns of Criminal Victimization in Canada," General Social Survey, 1990.

A victim may feel further distress and frustration in attempting to obtain the status of "their" case. For instance, a victim who calls the police station in search of the officers who conducted the initial investigation may find that they are on patrol or off duty; they may not receive messages for a few days and when they do they may not be able to help because the case has been assigned to another officer.

Where the police have been successful in their investigation of the reported crime and believe they have identified the offender, the next step is for the appropriate charge to be laid. In deciding what charges to proceed with, the police may consult with a Crown Attorney. They will consider all the relevant facts including the extent of personal injury or loss suffered by the victim. However, there should be a requirement that counsel are sensitive to the needs and wishes of victims and that counsel consider these needs in any 'plea bargaining.'

Once an accused has been identified, and a charge has been laid, a decision is made whether the accused will be detained in custody or released pending the conclusion of the criminal process. Many victims do not have input into this decision or receive information about the result.

A criminal trial is an adversarial process between the state, represented by the Crown, and the accused, who may be legally represented by defence counsel whose task it is to present the best defence possible for the accused within ethical limits. Although a victim's interests are taken into consideration by the Crown, the victim is unrepresented at the trial. The *Criminal Code*, the *Charter of Rights and Freedoms*, *Evidence Acts* and common law provide many safeguards for the accused but very little is specifically mentioned about the role of the victim. The only official recognition stems from the victims's role as witness. Many victims do not want to participate in the criminal justice system because they consider the crime too minor, they do not see any benefit, they feel intimidated by the offender, or they believe the general inconvenience and expense of the process or the fear of giving their evidence in a public courtroom is not worth their effort. Those who do participate often feel swept away in a process they have no control over or input into.

VICTIM/WITNESS ASSISTANCE PROGRAM

In 1987, the Provincial Government launched the Victim/Witness Assistance Program whose goal is "To enhance victims' and witnesses' understanding of, and participation in the criminal justice process." Its specific aims are to provide victims and witnesses with courtroom orientation; information about the criminal justice process; case specific information (bail, probation conditions, etc); and court accompaniment. Under the direction of the Provincial Coordinator of the Victim/Witness Assistance Program and the local Crown Attorney, project Coordinators deliver a local service. Although the Program has attempted to address some of the problems victims face in the system, the projects are designed to assist victims of crime and form a part of the prosecution process. The function of the Victim/Witness Assistance Program is limited to enhancing victim participation in the existing

process and is not designed to advocate on behalf of the victim by challenging the fundamental structure of the two party system.

The Ministry of the Attorney General also operates a number of other projects designed to assist victims of crime, including:

- The Designated Domestic Assault Coordinator Program;
- The Designated Child Abuse Coordinator Program;
- The Sexual Assault Coordinator Program; and,
- Emergency Legal Advice for victims of domestic assault.

At least one prosecutor in each Crown Attorneys' office has been designated to coordinate the prosecution of each of these offenses. (See Appendix "C" for Program descriptions).

RESTITUTION AND COMPENSATION

Where an accused has been convicted of an offence, the court may either pass sentence immediately or remand sentencing to a later date. Restitution and compensation are the only options that may financially benefit the victim. Restitution is the strategy of adapting the sentencing process to require the offender to recognize the losses of the victim, and to attempt to restore these losses. Although the victim may sue the offender in civil court for all damages including property loss and pain and suffering, restitution as part of the offender's sentence may be sufficient to restore the actual monetary loss suffered by the victim. Courts may be reluctant to use the *Criminal Code* sections authorizing restrictions because of the difficulty of determining the amount of the loss, and because they do not want to exceed their jurisdiction by stepping into the realm of civil remedies.

Compensation is a strategy based on the recognition of the limits of restitution and the civil process as a solution to the costs of crime. In Ontario, victims may apply to the Criminal Injuries Compensation Board for pecuniary loss, loss incurred as a result of injury, death or disability of the victim, losses to dependents as a result of a victim's death, payment for the maintenance of a child born as a result of sexual assault, pain and suffering, and for other expenses deemed reasonable by the CICB. The CICB has been accused of contributing to the victimization of victims by not being sensitive to their needs and concerns. In a recent survey of different stakeholders who deal with the Board, complaints were voiced about:

- the Board's denial of claims for compensation;
- the length of time it took to process a claim; and,
- the nature of Board hearings which appeared adversarial due to the manner of questioning by Board members.

ENFORCEMENT

The well-known problems associated with the enforcement of probation orders often discourage judges from using restitution as a sentencing option. As a result, the system offers very little reparative potential for the victim. The victim is further frustrated by a system which has no policies or principles of sentencing, often resulting in a disparity in the sentences awarded for similar crimes by similar offenders in similar circumstances. The effectiveness of current practices is unknown. In addition, the manner in which parole, remission, temporary absence and mandatory supervision affect sentencing is not understood by the public and not explained by sentencing authorities.

In recognition of some of these concerns, The Ontario Parole Board has recently issued a new mission statement, "*Values and Principles*", which states:

The Ontario Board of Parole believes in the special responsibility the offender has towards the victim and recognizes the role that victims play in the fair outcome of criminal justice proceedings. In making its decisions, the Board considers the circumstances of the offence and the impact on the victim. Statements from the victim are accepted by the Board and used in subsequent release decisions. (*Ontario board of Parole Policy and Procedures, OBP 03 03 05, March 1991*)

The Parole Board's policy also states that victim statements will be given the same weight as other information when making parole decisions. The victim must request to be informed about the Board decision as soon as possible after the hearing. The Parole Board will also assess the degree of the victim's safety before deciding whether to disclose the existence of a victim submission to the offender. The Board cannot ensure victim confidentiality to the offender since information may be disclosed in whole or part to the offender on request under the *Freedom of Information and Protection of Privacy Act*. (OBP 04 08 02)

OTHER PARTICIPANTS

Other participants in the system have also been guilty of contributing to the victimization of victims. Caregivers such as hospitals have a duty of care to report incidents of victimization by their staff, and/or anyone else associated with the system. For example, in a small local community people may be hesitant to report an alleged incident of sexual abuse against a physician from fear of losing a valuable resource and the repercussions of tampering with an influential member of the community. The result is that victims of sexual crimes, largely women, are comparatively disadvantaged relative to the perpetrators of sexual crimes, largely men. A systemic situation of inequality between the sexes exists in the crime of sexual violence and in the operation of the criminal justice system. These institutions are often complicit in an environment that has a limited understanding of sexual violence.

This issue has been addressed in a recent report of the Task Force on the Sexual Abuse of Patients established by the College of Physicians and Surgeons of Ontario. The report urges the College to develop policies, procedures, practices and education programs that support the philosophy of "zero tolerance" of sexual abuse.

(1) RECOMMENDATION:

Caregivers in institutions such as hospitals have a duty of care to report incidents of victimization to the appropriate authorities and not to protect the institutions.

At this time, victims who need to be made whole as a consequence of victimization cannot access services dedicated to their specific needs.

The rehabilitation process is haphazard and depends on the tenacity of the individual victim rather than the obligations of the state.

Victims have a minimal role at best in the criminal justice system. In fact, victims face a "double jeopardy" in that they are required to participate in investigations and trials at considerable financial and emotional cost and sometimes at the risk of actual intimidation by the accused. The victim's participation in the entire "system" beyond the judicial sphere, has further contributed to the secondary victimization of the victim. There must be a clear recognition of both the needs of victims of crime, and of the desirability of directing all the participants of the criminal justice system to consider these needs to a greater extent than is now the case. Victims should no longer be treated as "invisible" but as legitimate participants in many facets of the "system."

III) ISSUES DISCUSSED AND RECOMMENDATIONS PROPOSED BY THE ADVISORY BOARD ON VICTIMS' ISSUES

The Advisory Board on Victims' Issues held a series of meetings to review victims' issues and draft recommendations to be submitted to the Attorney General of Ontario.

Their discussions concentrated on the following key areas:

A) THE NATURE OF VICTIMS' RIGHTS IN ONTARIO:

A Proposed Philosophical Approach for Victims

The Advisory Board believes that victims' rights in the criminal justice system are based on the fundamental rights enshrined in the Charter of Rights and Freedoms which guarantees that

s. 7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

"Security of the person" can be interpreted to mean that the system should be responsible for protecting and ensuring that all victims have rights within the criminal justice system and the broader sphere of government. While not granting an absolute right of protection from emotional distress or upset, s. 7 "security" includes psychic freedom, such as from the threat of physical punishment or suffering, along with freedom from such punishment itself. It also includes personal dignity.

s. 15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

"Every individual is equal before and under the law" can be interpreted as equal protection and benefit of the law such that victims are protected from any abuse by the criminal justice system. This section of the Charter also creates an onus upon the system to respond and provide special needs as required by victims. For example, women and children are socially disadvantaged and disempowered in certain ways. Children are disadvantaged relative to adults in physical strength and size, psychic vulnerability to adult authority, economic dependence, social power, relative lack of credibility and deprivation of social voice.

Women are often disadvantaged relative to men economically, socially, politically, as targets for physical and sexual violence, and in access to credibility and expression. One of the purposes of s. 15 is to ensure that the law recognizes and redresses the disadvantage of inequality.

In order to ensure "equal benefit and protection under the law," and "security of the person," a victim's social and economic disadvantages need to be recognized and acknowledged by the system. There must be an understanding of the full reality of the crime and the full extent of the victimization from all participants in the system.

The Advisory Board strongly supports an approach that recognizes the rights of victims and duties of other participants in the system. A person who is victimized should be the one to determine his or her needs resulting from the injuries and victimization. This allows for victims to be validated and to subsequently define their needs in relation to their injuries. If victims' issues are placed in the context of s. 7 and s. 15 of the Charter, then it is possible to re-position the status of the victim in the justice system.

The government should be called upon to be sensitive to those needs and include consideration of a victim's culture, race, colour, creed, gender, age, disability, language, etc. Victims require a more open system which would allow them better access to available services and the provision of new services oriented to the situation and needs of the victim. The timeliness of services, access to information, availability of resources and inherent rights must be considered.

In the 1990's, it should be evident to society that victims have a key role and a direct investment in the justice system. The whole legal process should protect and benefit victims so that they will no longer be further victimized by the process itself. The interpretation of criminal laws should recognize these inequalities and the rights guaranteed under the Charter of Rights and Freedoms. It is dependent upon the government through legislation to ensure that all citizens including victims of crime receive equal benefit, equal protection, and equal security of the person.

(2) RECOMMENDATION:

A Charter-driven review that is victim-centred, of each process in the justice system should be undertaken. This would provide the government an opportunity to redirect and provide for the needs of victims who are affected by the justice system.

This Charter review would include:

a) all legislation including all related regulations, policies, procedures, practices and guidelines in the Province of Ontario to ensure that victims are afforded "equal protection and benefit" of the law and "security of the person" as supported by s. 15 and s. 7 of the Charter respectively;

b) current practices and policies for appointments, hiring and training of all criminal justice participants and all those involved in quasi-judicial processes;

c) creating protocols for dealing with victims of crime in the system;

d) the government's responsibility in terms of security of the person pursuant to Section 7 of the Charter, to create certain rights for victims and obligations for government. This process may take the form of a list of rights such as formulated by P.R.I.D.E. and found in Appendix "E" with the exception of #4, #6 and #8 which should be treated as guiding principles. It is also recommended that s. 15 of the Charter be recognized as reinforcing the responsibility on government to ensure that these Rights and Guiding Principles are followed by all participants in the system;

e) Other Issues to be reviewed:

- Victim/Witness Financial Assistance

- A victim who is also a witness, should be compensated for loss of wages, travel expenses and/or any other costs incurred as a result of being a witness. Funding implications need to be reviewed in order to provide for these costs.

- A victim who is especially vulnerable should be entitled to assistance whether it be counsel or some other advocate. The issue of whether there should be a tripartite system which gives victims full standing in criminal court or full intervenor standing should be examined further.

B) THE RANGE OF ISSUES REGARDING COMPENSATION FOR VICTIMS:

The Advisory Board selected for review and comparison four different models of compensation and victims' services in New Jersey, British Columbia, Connecticut and Ontario. The British Columbia Board was studied due to its linkages with the Workers' Compensation Board whereas the Connecticut Commission was chosen for its victim-centred approach to victims' services. The New Jersey Board was also examined because of its recent reorganization as a result of program restrictions. The following analysis compares the Ontario Board with the other three boards and recommends changes in terms of:

- 1) Legislation;
- 2) Limitation Periods for Filing Applications;
- 3) The nature of compensation; and,
- 4) Victim Reporting to Police Authorities/Level of Proof Required from the Victim.

LEGISLATION:

Ontario - The Criminal Injuries Compensation Board operates under the *Compensation for Victims of Crime Act*, (R.S.O. 1980 c.82, as amended and later referred to as the "Act"). The Act awards compensation to victims of crimes of violence, occurring in Ontario, which result in personal injury or death. The Act also compensates police officers and good samaritans who are victims of violent crimes. The crime of violence must be an offence under the *Criminal Code of Canada*. Any offence involving a motor vehicle is excluded unless the vehicle was used as a weapon of assault.

Connecticut - In 1978 legislation was introduced to create the Criminal Injuries Compensation Board whose mandate was to provide monetary compensation to victims injured as a result of a criminal act. A comprehensive statewide victim assistance program was established in 1985 which included six court based Victim Advocates. In 1987, new legislation was passed to expand the Victim Advocate program and create the Information Clearinghouse for crime and civil victims which can be accessed through a general toll free number. This Clearinghouse provides access to a referral and information distribution system. As a result, the name of the agency changed to the Commission On Victim Services (COVS). This same legislation required the COVS to periodically meet with legislators, state agencies and victim groups. To meet this requirement, the COVS implemented the Victim Services Coordinating Council whose members are appointed by the Governor.

New Jersey - The Violent Crimes Compensation Board (VCCB) was established under the *Criminal Injuries Compensation Act* of 1971. This legislation was enacted to assist victims of violent crimes who suffered personal injuries. The VCCB compensates qualifying innocent victims for medical expenses not covered by other means and for loss of earnings due to crime related injuries. A Victim's Bill of Rights was also enacted on July 7, 1985.

Recently, three Bills have been introduced in the Legislature to increase the penalty assessment which offenders will have to pay. Funds would be redirected away from the Board to fund police training and other areas. The VCCB has also drafted its own Bill designed to increase penalties on offenders with a portion of the funds collected to be set aside for the Attorney General's Office Victim Program. Presently, about 95% of all funds raised are routed directly to the Board with the remaining 5% to the Victim Witness Program.

British Columbia - In 1972, the Board enacted the *Criminal Injury Compensation Act* to provide compensation for an injury or death in British Columbia as a result of any one of the 50 criminal offences listed in the legislation or where injury or death resulted while a person was trying to arrest an offender, prevent the commission of a crime or render assistance to a peace officer.

LIMITATION PERIODS FOR FILING APPLICATIONS

In **Ontario**, an applicant has one year to file an application with the Board, from the date of injury or death. Many have criticized this time limit as unrealistic given that the judicial process requires about 12 months before a case is disposed of in criminal court. If an applicant misses the open period the applicant may ask to have the Board extend the limitation period. In extending the limitation period the Board determines why the one year period was missed. The Board looks at three criteria:

- 1) Did the applicant know about the Board?
- 2) Would it prejudice the Board not to hear the case?
- 3) Is there enough information such that the Board can make a determination?

In comparison, **Connecticut's** legislation stipulates a mandatory two year limit to file a claim after the date of a criminal injury or death; the exception is that as a result of physical, emotional or psychological injuries caused by the injury or death the person could not file a claim, that person may apply for a waiver of the two year time limitation. This reasoning applies to cases of sexual abuse where for example, the victim can prove that she/he coped by pretending the incident did not happen. Similarly, claimants in **New Jersey** must file applications to the Board within two years from the date of the occurrence.

The **British Columbia** Board resembles Ontario in that it requires applicants to file an application to the Board no later than one year from the date of the occurrence. The British Columbia Board usually grants extensions as long as a police report is filed.

It is also important to note that the *Act* in Ontario does not address the ability of a victim to retroactively file an application for an occurrence prior to 1968, this provision has not been available. Therefore, a person who was a victim of sexual violence or domestic violence as a child prior to 1968, has been barred from ever making an application.

An application may be brought by a victim, or on behalf of a victim, where the victim, because of age or some other reason, may require a third party to begin and carry forward the application. However, victims who are homeless children under the age of 18, and do not have a "third party" to submit an application on their behalf, are denied the right to apply for compensation.

RECOMMENDATIONS:

(3) LIMITATION PERIOD FOR APPLICATIONS TO CICB

- a) **Maintain the 1968 time limit for filing an application with an exception for acts of sexual violence, violence against children and wife assault. For these types of crime, there should be no time limits.**

Note: The Consultation Group on the Reform of the *Limitations Act* has recently recommended to the Attorney General of Ontario that all limitation periods in the area of sexual assault for offences committed in relationships of trust or dependency, such as those involving parents and guardians be removed.

- b) Amends s. 6 of the *Act* to expand the time limit for filing an application from one year from the date of injury or death to two years plus Board discretion from the date of injury or death.
- c) Develop a policy directive to allow an application to be filed by a 16 or 17 year old who is no longer under the care of a parent. However, for the purpose of time limits the limitation period will not be deemed to commence until the applicant reaches the age of 18.

THE NATURE OF COMPENSATION

Ontario ("CICB")- The *Act* defines "injury" to include actual bodily harm and includes pregnancy and mental or nervous shock. Consequently an individual suffering from nervous shock because that person witnessed a crime of violence may make an application to the Board as a victim. However, a victim who is subject to a criminal threat but does not receive any physical harm and does not meet the test of nervous shock, such as a bank teller who is held-up at gun point, would not be entitled to compensation under the *Act*.

Once a determination is made that an applicant is a victim of crime, then the Board may compensate on the following basis:

- a) expenses actually and reasonably incurred or to be incurred as a result of the victim's injury or death (This would include counselling, eye glasses, dentures, hearing aids and other prostheses);
- b) loss of wages as a consequence of the total or partial disability affecting the victim's capacity to work;
- c) pecuniary loss incurred by dependants as a result of the victim's death;
- d) pain and suffering;
- e) maintenance of a child born as a result of a sexual assault;
- f) other pecuniary loss resulting from the victim's injury and any expense that, in the opinion of the Board, is reasonable to incur.

The CICB is a Board of last resort and consequently must ensure against double recovery. However the Welfare and Family benefit authorities do not subtract compensation from an applicant who is awarded a pain and suffering award by the

Board. The Board does not award any amount for damage to property as a consequence of a crime of violence.

New Jersey ("VCCB") - A fundamental difference between Ontario and New Jersey, is that the latter Board distinguishes between a "victim" and an "innocent" victim by only compensating an "innocent" victim of crime. In comparison, Ontario examines the "incident" and the circumstances which could limit or reduce the claim.

In awarding compensation, the New Jersey Board has developed its own "loss member" schedule related to future earnings. This schedule is similar to a Workers' Compensation Schedule that pays a lump sum for the loss of a limb or an eye. Therefore, the Board pays lost wages plus any "loss of use." The Board does not pay for Pain and Suffering or personal injury but only for expenses resulting from the occurrence of a violent crime. This Board also does not pay for ongoing pensions. It is important to note that the New Jersey Board divides the compensation award between the applicant and the providers of services (i.e. hospital) to the victim. If the required pay out exceeds the \$25,000 compensation limit, the Board negotiates with providers to readjust the bills or to pay a percentage of the amount outstanding.

Federal amendments introduced last year changed the treatment of domestic violence incidents. A victim, who is a relative to or living with one's offender, is no longer barred from receiving compensation unless compensation proves to be a substantial unjust enrichment to the offender. For example, if a woman who is sexually abused co-habits with her offender she may receive compensation if she proves that there would be no unjust enrichment to the offender.

Where there is a conviction, the New Jersey Board does not automatically treat the claimant as a "victim" as Ontario does, but instead the Board must make a finding of independent determination of fact. The New Jersey Board considers a "preponderance of credible evidence" as compared to Ontario which considers a "balance of probabilities."

Connecticut ("COVS")- In determining whether compensation will be awarded and the amount to be awarded, the Commission must consider any collateral sources available to the victim such as medical insurance, Medicare, public assistance, Medicaid, Worker's compensation or any other financial resources beyond the victim's personal income. Any expenses incurred as a result of the crime that have been or can be paid by a collateral source, other than life insurance, must be considered by the Commission. If an applicant is on public assistance, the COVS may only award an amount which is not covered by public assistance. Similarly, in assessing compensation, the CICB assesses any benefit, compensation or indemnity paid or payable to the applicant from any other source other than general welfare assistance or family benefits.

The COVS also compensates for the loss of future functions such as a broken arm that does not heal properly. Although the COVS terms this form of compensation

as "permanency" and does not have a "loss member schedule" like New Jersey, this compensation mirrors Ontario awards of pain and suffering. The COVS also does not pay for property loss similar to Ontario. If, however, a Connecticut resident is injured out of state, the COVS will compensate.

When the Commission compensates a child, the payment is placed in a trust for the benefit of the child until the age of 18 or to any other person who has suffered pecuniary loss, including but not limited to funeral expenses, as a result of such death. The Commission has expanded this section to include the purchasing of annuities for children in trust and also for adults who will permanently suffer the consequences of a violent crime (eg. a sexual assault). A victim and/or family members can apply to the Commission at a later date for additional compensation. It is important to note that an original denial of an application from the Commission taints any future compensation. If, however, the initial decision was in favour of the victim, all subsequent applications are treated impartially and therefore, may be either granted, reduced, or denied. Connecticut is similar to New Jersey in this application. Ontario, however, does not consider if the initial claim was awarded, denied or reduced. For example, if a victim participated in a drug deal that went bad, and a award was not given, but if at a later date the victim's mother applied for compensation, her claim would not automatically be tainted by the original denial.

British Columbia - This Board has moved away from seeking a victim of crime and following a court case, to compensating a victim in need. (The previous administrations of the Board believed that a criminal conviction was more important than compensation, therefore adjudication was delayed until after the court case had been decided.) The British Columbia Board may grant a maximum pension for life in the amount of \$45,000 a year which is also linked to inflation. In comparison, Ontario grants pensions only for loss of wages and for Pain and Suffering to a maximum of \$1,000.00 a month. The CICB reviews pensions in terms of the changed circumstances of the victim. For example, if the claimant has been retrained and has acquired a new job, the CICB will cease the monthly pension. In contrast, British Columbia has never reduced or terminated any of the 300 pensions currently payed out. A pension could be reduced or stopped if a victim reaches the age of majority, leaves school or if the victim is a widow or widower and remarries and is no longer in financial need.

RECOMMENDATIONS:

(4) DEFINITIONS

a) Amend s. 1 (f)(a) of the Act, the definition of "Spouse", to include "Same Sex Spouse" which is consistent with the *Human Rights Code* and reflects current values of society.

b) Amend s. 1 (d) of the Act, the definition of "injury" to include the sequela of a criminal threat to do bodily harm. Further review is required.

(5) CATEGORIES OF VICTIMS

Presently, there are three categories of victims namely, police, good samaritans and victims under the *Compensation for Victims of Crime Act*. Pursuant to s. 19 (5) of the Act police officers and good samaritans are potentially entitled to damages based on common law standards rather than those limitations imposed by the Act.

A consensus among the Advisory Board was not reached whether each category of victim should receive equal compensation limits. As a result, the Advisory Board recommends that this issue be reviewed further.

VICTIM REPORTING TO POLICE AUTHORITIES/LEVEL OF PROOF REQUIRED FROM VICTIM:

Ontario ("CICB") - According to a strict reading of the statute, the applicant may be denied compensation if he/she has failed to promptly report to the police the act or omission resulting in the injury or failed to reasonably cooperate with authorities. The Board has ruled that a police report or in fact reporting the incident at all is not a prerequisite to having an application accepted and an award made. For example, the Board has held that it is unreasonable to expect that in all cases a victim of sexual assault must report the crime to the police. The Board does, however, consider the degree of cooperation of the victim with the criminal justice system under the circumstances in determining the amount of the award.

In conjunction with these relevant factors, the Board also considers the "behaviour" of the applicant which directly or indirectly contributed to the death or injury of the victim. For example, if the victim was involved in a "bar room brawl" in which the victim provoked the incident, the CICB would probably order a reduced compensation award.

New Jersey (VCCB) - The Board has the discretion to interpret its legislation broadly and in a flexible manner. For example, the occurrence of an incident of crime must be reported within 3 months to police by statute. However, if the victim is from the inner city and thus hesitant to contact police or the hospital, he/she will not likely complete a report. Therefore, the Board must consider if the victim made a "reasonable effort" to contact police before granting compensation.

Although the Board considers "community values" when reviewing a claim it also takes into account the victim's provocation and behaviour. For example, every citizen is free to walk the streets but that citizen also assumes a risk. If that citizen walks into a bar and flashes money and later is mugged outside the bar, then the Board would judge that the citizen assumed a risk by his/her behaviour. In most cases, however, the VCCB does not penalize a victim for failure to report to law enforcement authorities on a timely basis.

Connecticut ("COVS") - The philosophy of the Compensation Program is to balance the realities of resources against the needs of victims. The state has an interest in preventing crime by reporting and cooperating with law enforcement. According to statute, applicants are required to report to police within five days of the occurrence of the incident and to cooperate with police in order to receive compensation. In comparison, this mandatory requirement is non-existent in Ontario. Instead, the Criminal Injuries Compensation Board in Ontario weighs more heavily the potential family breakdown in cases where reporting the incident of a violent crime would cause severe hardship to family members and/or the victim.

The COVS, however, is victim-centred in delivering the Homicide Program for family survivors by offering counselling services regardless of the victim's actions. Although a report is required within five days of the occurring incident, most Commissioners are flexible as to when a report was made but one has to have been filed.

British Columbia - The Board requires that victims of sexual offences file a police report; in fact, only in rare cases is compensation granted without a report. In comparison, the Ontario Board establishes if there is a "victim" through oral evidence and not necessarily via police reports which the Board believes encourages the prosecution of individuals.

Most victims in British Columbia are encouraged to file police reports. A social worker and foster mother at an oral inquiry for a child sexual abuse case suggested that if victims did not file police reports they will more than likely not succeed with their application before the Board.

In respect to denying or reducing awards, the Board considers contributory behaviour in cases where a person provoked the incident. An act is also considered as contributory if a victim is, for example, on the wrong corner of a particular neighbourhood. As an example, prostitutes who are injured on the job may be compensated depending upon the circumstances of the occurrence.

(6) RECOMMENDATIONS:

a) Amend s. 17(1) of the Act to remove "including any behaviour of the victim" and to provide policy directives to describe the meaning of "including any behaviour." These directives must be Charter-based.

s. 17(1) - In determining whether to make an order for compensation and the amount thereof, the Board shall have regard to all relevant circumstances, (including any behaviour of the victim) that may have directly or indirectly contributed to the injury or death of the victim.

b) Amend s. 17(2) of the Act by removing "prompt reporting."

s. 17(2) - The Board may, in its discretion, refuse to make an order for compensation or order a reduced amount of compensation where it is satisfied that the applicant has refused reasonable co-operation, or order a reduced amount of compensation where it is satisfied that the applicant has refused reasonable co-operation with, (or failed to report promptly the offence) to, a law enforcement agency.

In considering a claim for compensation the Board may include the degree of cooperation with the criminal justice system and with the CICB as one of the factors used to determine the amount of the compensation award.

In making its determination the Board should give due consideration to the age and circumstances of the victim, the nature of the crime and any legitimate fears the victim may have.

RELATIONSHIP BETWEEN CICB AND OTHER FORMS OF REPARATION, CRIMINAL AND CIVIL

VALIDATION

The Advisory Board believes that survivors of homicide victims should receive a symbolic compensation of Grief and Sorrow similar to awards presently being given for Pain and Suffering. The rationale is that victims feel validated when it is acknowledged that they have suffered.

LIMITS ON COMPENSATION AWARDS

A major criticism voiced by the Advisory Board is that compensation awards are currently too low and will run out for victims who are young with permanent disabilities. For example, a young victim who is a paraplegic may be awarded the maximum monthly periodic payment limit of \$1,000 under the Act. This compensation award will be received over about a 15 year period but will not be indexed to inflation. It is also important to note that provisions for rehabilitation benefits are non-existent. Obviously, this form of compensation is insufficient to compensate the victim for a permanent disability. In addition, most other plans such as those offered by insurance companies provide better forms of monetary reimbursement than what the CICB awards in compensation.

Historically, compensation boards were enacted as a means of last resort for the victim. (See Appendix "A") The Ontario Board currently offers a low level of compensation. A victim who is unemployed and/or not in the workforce voluntarily such as a housewife or student and has no other source of disability income protection will receive an insufficient amount of compensation. Further, this victim would be barred from a CICB compensation award if that victim is also receiving social assistance benefits.

The Advisory Board agreed that other sources of compensation must be considered beyond CICB awards. When people are victimized they need to be compensated back to the "standard" or lifestyle they were maintaining prior to the incident of crime. Specifically, Government should be responsible for coverage of all victimization to provide this "standard of living." In addition, the "life long impact" of an occurrence of violent crime should be compensated regardless of other compensation packages excepting if wage loss is covered elsewhere. For instance, the CICB would order a lifetime compensation award for Pain and Suffering to a permanently disabled victim even if that person is receiving other benefits such as from the Workers' Compensation Board.

Further review is required on the issue of whether the CICB will integrate benefits and relate them to comprehensive disability.

(7) RECOMMENDATION:

- a) Amend the *Act* to allow the CICB to award for claims of Grief and Sorrow and Pain and Suffering as more than symbolic awards and to include an assessment on the real economic costs of victimization.
- b) Social assistance should not be reduced if a victim has received a CICB award which would then not be treated as income.

C) ACCESSIBILITY OF VICTIM SERVICES

Access to the Criminal Injuries Compensation Board (CICB)

The Advisory Board supports the results of the CICB's stakeholder survey in which almost half of the respondents noted that they did not make regular referrals to the Board. The stakeholders suggested that access to the Board be improved in order to correct the community's misinformation and misunderstanding on a variety of issues.

(8) RECOMMENDATION:

In order to improve public awareness and accessibility to the CICB, the following is recommended:

- Coordination of information with other sources;
- Outreach in areas such as culture, language, literacy skills, etc.;
- Implement a 1-800 number which provides direct access to the CICB and publish the number in the front cover of the phone book;

-
- Develop Charter driven criteria for selection and training of Board members and staff to ensure that they have a demonstrated understanding of
 - psychological trauma, etc.
 - victim vulnerability
 - gender specific discrimination, violence against women, children, the elderly and family violence
 - wider appreciation of victimization
 - recognition of people with special needs
 - Up-date and simplify application forms and ensure a wider distribution to the community (i.e. shelters, victim-witness assistance programs, etc.)
 - Train referral sources such as the police, etc.

EFFICIENCY OF CRIMINAL INJURIES COMPENSATION BOARD

The Advisory Board reinforces the findings of the CICB Stakeholder Survey in which the Board was told that it must improve its level of applicant service such as increasing the turnaround time for processing compensation cheques.

(9) RECOMMENDATION:

In order to increase the efficiency of the Board the following is required,

a) Review and Amend the Act and other relevant legislation to:

- require police to provide the CICB with any information pertaining to the occurrence before the Tribunal, subject to the requirements of the *Freedom of Information and Protection of Privacy Act*.
- allow the CICB to hold a single member hearing on the first instance based solely on the documents unless the victim requests otherwise;
- conduct a Charter review on whether or not the release of information should be shared between both the offender and the victim.

b) Operational and Administrative Enhancements:

- proper resources and their utilization (e.g. technology)
- speed-up turn-around time (standards)
- operational review of Board

-
- upgrade the file tracking system to determine the status of a case on a computer terminal
 - process cheques by CICB instead of Ministry
 - send out extension forms along with application forms

c) Improvement of Client Relations:

- ongoing user evaluation/feedback
- media/public relations strategy

COORDINATION OF VICTIM SERVICES IN ONTARIO

As Appendix "C" indicates, victims of crime in Ontario have access to a diverse group of victim services which are offered by different levels of government, private organizations and non-profit groups. The CICB has established indirect linkages with various victim services organizations but the Board does not offer any form of victim services. Although victim lobby groups and community acknowledgement and dissatisfaction with such violent crimes as wife assault, sexual assault, child abuse, etc. have led to more services being made available to victims of these crimes, there is a need to further expand these services and to create a central coordinating or referral agency in Ontario.

The issue of whether the CICB is the appropriate body to act as a clearinghouse/ referral agency of information similar to the Connecticut model (See Appendix "B") was examined by the Advisory Board. The group concluded that due to a lack of resources at the Board, the greater priority and practicality of local coordination and serviceability and the extensive training which would be required, this option would not be viable at this time.

(10) RECOMMENDATION:

The CICB should not be in a coordination role for province wide victim services. However, there is a need for someone to rationalize and coordinate resources once the need for additional services has been met. It is, therefore, recommended that:

- 1) funding for government-based and community-based victim services be received from the Province and that government interact with the community to create a forum for joint decision-making and planning; and

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- 2) coordination should be accomplished through a provincial interministerial committee to rationalize resources. The current interministerial committee on wife assault could be used as a model or an overall committee could be formed to consider all issues.

DIRECTORY ON VICTIM SERVICES

The Advisory Board also supports the development of a locally based computerized directory on victim services which would assist a victim in identifying his/her needs by offering a listing of services. This directory would only be established once the level of victim services is increased. A false assumption that an adequate level of victim services exists would be created if just a directory were established.

CHILD ABUSE REGISTER

The Advisory Board also examined the current status of the Child Abuse Register in Ontario whose function is to record a listing of child abusers. It was found that the information contained in the Register is inconsistent since people are registered on an ad hoc basis. The Advisory Board strongly believes that mandatory reporting of child abusers could enhance the detection and prosecution of child abuse. Strict guidelines meeting privacy considerations should be developed that comply with the standards set out in Ontario's *Freedom of Information and Protection of Privacy Act*.

In a recent report by N. Bala titled "The Ontario Child Abuse Register Report," he recommends the creation of two sub-registers: a Register of Child Abusers or the "Abuser Register" to screen individuals in positions of authority and trust over children, and a Child Abuse Research Register for the collection of non-identifying information about suspected or confirmed abuse cases.

(11) RECOMMENDATION:

There is an obligation on the state to create a more equitable system through the up-date and maintenance of a viable Child Abuse Register so that institutions can check if they are hiring persons who have abused. Extensive training should be available to those who are responsible for maintaining the Register. There should also be fair access to the Register and built-in safeguards for affected parties.

VICTIM'S ASSISTANCE/PSYCHOLOGICAL CONSEQUENCES OF VIOLENCE AGAINST WOMEN AND CHILDREN

The Advisory Board suggests that those serving victims identify victims' needs whether they be legal, medical, psychological, spiritual, etc. The goal is to identify

those supports which will help victims. Some victims who experience severe financial constraints require interim-financial assistance in the form of interim-compensation payments. While s. 14 of the *Act* does provide for the payment of interim awards in respect for maintenance, medical expenses and funeral expenses, this section does not specifically award for counselling services which may be needed in the short term. The focus should be on a reparative approach as opposed to an adversarial approach. Victim's assistance involves healers and support systems and not just the legal system.

A holistic approach would recognize that the criminal justice system is only one small part and that people have lives before and after the criminal process. In fact the judicial process can make peoples' lives worse and this is not acceptable under a Charter review of the laws of the land. An example of this can be seen when an abused child has to relive the incident in the witness stand without the advantage of special preparation for the experience and/or the assistance of a supportive adult or a prosecutor who is aware of the vulnerability of the child during this difficult time. This situation clearly reflects how the system contributes to the victimization of a victim.

(12) RECOMMENDATION:

- a) The Criminal Justice System must be victim/accused balanced and must allow for victims' special needs. (*Refer to Appendix "E" for Proposed Rights and Guidelines*)
- b) Victims' Services must be expanded and new services developed whose goal is to heal and support those who have been victimized.

The level of Victim Assistance must be increased to accommodate:

- non-verbal (infant, disabled, etc.) victims who do not fit into the "perfect witness" role;
 - victims with special needs such as disabled persons who require wheelchairs to ensure victim-centred access;
 - psychological/emotional needs of each victim as an individual. This initiative would remove barriers which would keep people from participating in the process;
 - issues of age. For example, children who are victims of sexual abuse have very different needs than other victims;
 - issues of culture and language. Victims who speak another language or have a different culture require special victim assistance.
- c) Develop a Policy Directive to supplement s. 14 of the *Act* to allow the Board to grant interim awards for counselling services in the short term, especially for disempowered victims (eg. women, children, elderly).

TRAINING OF SERVICE PROVIDERS

The Advisory Board recognizes that service providers and professionals have a duty to be informed about victims' services. For example, the Office of the Official Guardian (OG), who represents the civil rights of persons under a legal disability, such as children under 18, and the mentally incompetent, could better assist its clients who may also be victims by:

- *maintaining* specialized training for panel lawyers on child abuse issues and *maintaining* outreach to the community to encourage and assist in applications being brought to compensate abused children.
- streamlining the process between the CICB and OG to avoid duplication of services in the provision of assistance to applicants before the Board.

Service providers need to ensure that staff members who will assist the child and family through the CICB process are educated and trained. In addition to the OG, Children's Aid Societies and a few Community Legal Clinics which bring applications before the Board, there is a role for children, women and youth advocacy groups. Advocates should also be placed into community-based organizations. Although people should have access to legal counsel if they need it, there is a greater need to provide other victim services other than more legal aid/lawyers.

THE BALANCE BETWEEN THE VICTIM'S RIGHT TO PRIVACY AND THE RIGHT OF THE PUBLIC TO BE INFORMED

One of the issues addressed by the Advisory Board, is whether there should be a limitation of access to information surrounding compensation awards and public hearings. For instance,

- Should the amount of the award granted and the victim's name be identified?
- Is there a duty on the part of the Press/media to report information to the public?
- What options should be available for victims who want in camera hearings?

Pursuant to s. 12 of the *Act*, all hearings are to be public except where the CICB believes it is necessary to hold a hearing in camera such as in the case of a sexual offence or child abuse. Furthermore, s. 13 of the *Act* allows the CICB to make an order prohibiting the publication of any report based on the evidence given at a hearing. The Advisory Board does not unanimously support the CICB's strict application of s. 12 of the *Act* on "in camera" hearings because it is believed that there is a lack of accessible information on the process and the decisions rendered. Although the

Advisory Board agrees that certain victims such as sexually abused children should receive in camera hearings, some members suggest that victims would benefit if supporting victims' organizations had access to all information resulting from the hearing.

(13) RECOMMENDATION:

- a) Clarify the policies and procedures surrounding both in camera hearings and public hearings.



APPENDIX "A" — HISTORICAL CONTEXT

A) PHILOSOPHICAL BASE FOR COMPENSATION

One of the most widely held philosophies is that the state has induced people to rely on it for protection from crime, that the commission of a crime is the result of the state's failure to perform its protective service, and that the state, therefore, should assume responsibility for compensating the victim for any loss or injury. Further, the state's role in compensating victims of crime has been viewed as a natural step in the progression of social welfare schemes.

The criminal justice system under English common law, however, evolved into a system for prosecution of the offender by the state on the theory that society's interest was thus protected, the laws upheld, and the offender punished. There was no assistance to the victim by the state. Victims were left with civil remedies against their assailants and, in most cases, suffered pecuniary loss and injuries.

In attempting to accomplish the above, the state created an implied relationship between the victim and the judicial process. The victim had to agree to participate in the process of the Criminal Justice system and then the State agreed to provide another process which would allow for compensation. The Victim Assistance/Compensation system in North America is primarily based on the full compliance and cooperation with the authorities on the prosecution of the offender.

B) HISTORY OF LEGISLATION

In 1964, New Zealand established the first scheme in the world to provide financial compensation to victims of crimes of personal violence. However it was not until 1967 that Saskatchewan became the first province in Canada to proclaim legislation in this area. In Ontario the Compensation For Victims of Crime Act was passed in 1971 which was modelled, along with Saskatchewan's legislation, on the New Zealand model. Ontario's Act, however, included a very important feature not present in the other legislation. This added provision stated that not only could losses be recoverable for injuries or death sustained as a result of crime, but they may also be recoverable for injuries or death sustained performing or attempting to perform a citizen's arrest, or helping the police in their duties.

There were several incidents or events which contributed to the development of legislation in the area of criminal injuries compensation. On April 1, 1968, Ontario introduced its first piece of legislation known as the Law Enforcement Compensation Act. This legislation was enacted as a result of public pressure over the misfortunes of a Toronto cab driver who was shot in the leg by a client and subsequently, denied compensation from the Workers' Compensation Board. The new Act expanded the protection given to the public to the extent that a citizen need not respond to a request of a peace officer, but was also covered if he acted on his own. The introduction of the 1968 legislation only produced two applications in its first fifteen months of operation.

APPENDIX "B" - A COMPARATIVE REVIEW OF THREE MODELS OF COMPENSATION WITH THE ONTARIO MODEL

Jurisdiction	Ontario	British Columbia	New Jersey	Connecticut
Number of staff	25 (public servants)	25 (public servants)	56 (most political appointments)	36 (public servants)
Commissioners/ Board members	15 political appointments for three years	3 adjudicators/lawyers render decisions which are reviewed via a three WCB appeal committee	5 citizens appointed by Governor • not more than 3 are members of same political party • at least 3 are lawyers	3 commissioners appointed by Governor (includes 1 lawyer, 1 physician and 1 citizen)
Approximate number of claims processed (1990-91)	2,179	4,000 (use of WCB resources)	4,000	1,300
Total annual payout in compensation	\$9.8 million	\$13 million	\$4 million	\$4 million
Total administrative costs of programs	\$1.8 million	\$1.04 million	\$1.55 million	\$3M + \$1M (counselling serv.)
Average award per claim	\$4,412	\$4,438	\$4,750	\$4,000
Maximum award (lump sum)	\$25,000	\$50,000	\$25,000	\$15,000
Periodic payments	\$1,000 monthly to a maximum of \$250,000	\$45,000 indexed to inflation	none	none
Emergency award	• Yes • see s. 14 of Act	• Yes • see s. 9 of B.C. Act	• Yes • see s. 52-4B 10.1 • maximum of \$500 per award up to \$1500 per applicant	• Yes • see s. 54-217 of Act • maximum award of \$500
Filing deadline	one year	one year	two years	two years
Report to Law Enforcement	s. 17(2) Act reasonable reporting	no requirement under Act	3 months from date of occurrence	5 days from date of occurrence
Funding	- cost sharing agreement between Provincial and Federal Governments. - Federal Govt. contributes 25 cents per capita of population of the province or \$50,000 of the compensation paid, which ever is greater. - General Revenues.	- cost sharing agreement between Provincial and Federal Governments. - Federal Govt. contributes 25 cents per capita of population of the province or \$50,000 of the compensation paid, which ever is greater. - General Revenues.	Three sources: - State general fund - Federal grant program - Penalty Assessments	Two accounts: - Criminal injuries comp. ac (Penalty revenue collections from offenders, subrogation actions, donations, interest on Accounts, 3% of inmate wages at correctional Institutions & Reallocation of Reserves). - State General Fund Appropriation.

APPENDIX "B" - COMPARISON OF THREE MODELS OF COMPENSATION WITH THE ONTARIO MODEL

PROGRAM STRUCTURE AND ORGANIZATION - (see attached Chart)

The Ontario Board is headed by an appointed full-time Chair and Vice-Chair along with a part time Vice-Chair and fifteen part-time Board members who are also appointed for three year terms. The Board is supported by a public service staff of 25 including a Registrar, Investigators, Compensation Analysts, and Support personnel. The Board functions as an independent administrative tribunal with an arms length relationship to the government which provides funding for the Board.

In contrast, the British Columbia Criminal Injuries Section (CIS) is administered by the Workers' Compensation Board (WCB) on behalf of the Ministry of the Solicitor General. The CIS unit is headed by a Manager who is also responsible for the Legal Services Unit of the WCB. The Manager reports to the General Counsel of the WCB who reports directly to the Chairman of the WCB. The CIS employs about 25 staff including a staff doctor, Investigators, Lawyers/Adjudicators and support personnel.

The New Jersey Violent Crimes Compensation Board (VCCB) is comprised of 56 staff including five Commissioners, an Office of the Chairman, an administrative unit, an investigative unit, a penalty revenue section, the Office of Board Counsel, the Victim Counselling Service, the Office of Victim-Witness Assistance, a work processing unit, the office of management information systems, and support staff. It is also interesting to note that the majority of VCCB staff are politically appointed through the Governor's Office.

The Connecticut Commission on Victim Services (COVS) consists of 3 Commissioners and an Administrator who oversees 36 employees divided into four units namely, Administration, Victim Services, Compensation and Information Clearinghouse. Similar to the Ontario Board, all staff are public servants, except for the Commissioners who are appointed by the Governor.

PROGRAM COSTS AND FUNDING

As Appendix "B" indicates, for the 1990-91 fiscal year, both New Jersey and British Columbia processed about 4,000 claims while Ontario disposed of 2,179 claims and Connecticut cleared about 1,300 claims. British Columbia surpasses all the other Boards surveyed in terms of paying out the largest amount of compensation (\$13 m) with the lowest administrative costs (\$1.04 m) and the smallest staff (25).

In comparison, Ontario pays out \$9.8 million in compensation with an administrative budget of \$1.8 million, 40 staff, and 15 part-time Board members. New Jersey

distributes about \$4 million in compensation with an administrative budget of \$1.55 million, 56 staff, and 5 Commissioners. Similarly, Connecticut compensates a total of \$4 million but spends \$3 million on administrative costs, 36 staff, and 3 Commissioners. Although the British Columbia Board appears to be more efficient than the other Boards, in fact the Criminal Injuries Section shares much of the on-site resources and facilities of the Workers' Compensation Board which reduces program costs. Another important factor which explains the disparities between the Boards is the different processes of decision-making. For example, Ontario spends a greater deal of time verifying information and conducting their own investigations to acquire full information. The Ontario Board makes about 40% of its decisions on documentation whereas the B.C. Board only spends 10% of its time holding oral inquiries and 90% of the time rendering decisions on documents which results in a quicker processing rate. In terms of Connecticut's mandate, which is different in scope from the other Boards, the comparison on the basis of efficiency is inappropriate. It is important to note that this state allocates \$1 million to funding Counselling Services which consumes a large part of the Commission's activities.

All four Boards are relatively comparable in terms of average award per claim which ranges from \$4,000 to \$4,750. Connecticut has the lowest average pay out per award of \$4,000 and the lowest possible maximum award under legislation of \$15,000. In contrast, British Columbia has the highest maximum limit for lump sum payments of \$50,000 followed by Ontario and New Jersey which have maximum limits of \$25,000 for a lump sum amount. Unlike both Canadian Boards, the two American jurisdictions studied do not grant periodic awards. Both Ontario and British Columbia receive funding through a cost-sharing agreement between the federal and provincial governments. However the large portion of their funding comes from the general revenue of their respective provinces. In comparison, both American Boards receive funding through State General Funds, Federal Grant Programs and Penalty Assessments.

HEARINGS AND ORAL TESTIMONY:

Ontario ("CICB") - The Act has enshrined two rights for victims: a right to apply for compensation, and the right to have a hearing at which entitlement to compensation is determined. A decision may be made by a Board composed only of one person on the basis of documentary evidence, unless the applicant exercises his/her right to a *viva voce* hearing. The CICB has the jurisdiction to conduct a hearing even though the alleged offender has neither been prosecuted for, nor acquitted of the offence which resulted in the injury or death.

New Jersey ("VCCB") - The VCCB is the only jurisdiction in this study which has its own in-house counsel to provide representation of the Board at administrative hearings. Hearings are held to aid the Board in reaching a determination on certain claims and to assist in the preparation of those claims. In addition to Board Counsel being present at a hearing, the Board's Investigator on the case, 3 Commissioners, the victim and his/her counsel are also in attendance.

The VCCB holds fewer in camera hearings compared to Ontario which has more in camera hearings especially for cases of sexual violence, child abuse, and domestic violence.

Connecticut ("COVS") - Although Connecticut's legislation calls for a hearing to be held on application, a hearing is only held if a claimant disagrees with the claim determination. A hearing is usually held with all three Commissioners, the victim and his/her counsel.

The Commission agrees that it is not fair due process that a Commissioner who made an initial determination on a case be allowed to render a decision again if the applicant requests a formal hearing. The Commission's formal hearing decision may be appealed to Superior Court. In Ontario, applicants can appeal to Divisional Court.

British Columbia - The Board holds informal, non-adversarial inquiries to gather more information from victims and to render a decision on applications. The Board estimates that less than 5% of all cases have oral inquiries. As a result, the Board places a strong emphasis upon adjudication on documents and working together with professionals (ie. lawyers, doctors) to make a case for victims. In British Columbia there is a strong desire by the adjudicators to rely upon police reports. Applicants who disagree with the Board's decision may appeal to a 3 person Appeal Committee of the WCB. If the applicant also disagrees with this decision, the file is then reviewed by a panel of Commissioners of the WCB.

MAJOR CRITICISM OF BOARD/COMMISSION:

Ontario - In a recent CICB survey of stakeholders, their criticisms of the Board included the length of delay in processing claims and the lack of accessibility to the Board. These incidents have been cited as contributing to the community's misinformation and misunderstanding of the CICB.

New Jersey - The major criticism of the Board is from providers (hospitals, etc.) that funding is not received on a timely basis. The Act requires that decisions be made within 6 months from the time that all information has been received which permits the Board to make a proper determination. Therefore, the Board often requires more time to gather information prior to rendering a decision (all 3 Commissioners who reviewed the case must sign the Order along with the final approval of the Chair).

Connecticut - There is a need to improve the self-image of the Commission to victims who currently perceive the COVS as adversarial and bias due partially to the fact that 3 male Commissioners are rendering decisions on claims. Furthermore, the COVS must develop internal mechanisms to better coordinate the victim services side of the Commission which has out-paced the compensation program through its proactive, victim-centred approach to assisting all applicants.

British Columbia - Applicants have criticized the delay in payment or the average time it takes for a victim to receive monetary compensation. Providers also criticize the Board because it takes 6 to 8 months from the application date to the date of adjudication to resolve the case. The processing of the cheque or payment is an additional 3 weeks. This is due to a great increase in the number of sexual abuse cases and a poor computer program. In comparison, Ontario has about a 12 month turnaround from the date an application is filed to the final decision.

PROGRAM PROCEDURES FOR CLAIMS PROCESSING

STEPS IN PROCESSING A CLAIM IN ONTARIO:

- 1) An application is received and reviewed by the Registrar. Support staff check existing files and note any relevant cross-references. A file number is assigned, data entered into the computer and the file passed to a Compensation Analyst.
- 2) If the applicant is represented by a solicitor, the solicitor is advised what information is required to support the claim. If the applicant is not represented by a solicitor, the Compensation Analyst will assist the applicant to obtain the necessary supporting documentation. Using the authorizations which the applicant signed when completing the application form, the Compensation Analyst will request medical reports, employer statements etc. to support the claim. At the same time the Chief of Investigation requests a police report.
- 3) The Compensation Analyst assembles the incoming documentation and ensures that it is adequate to allow the Board panel to reach a decision.
- 4) The Chief of Investigation reviews the incoming police reports and determines if a field investigation is required. Approximately 40% of applications received require a field investigation. The investigator will prepare a report which becomes part of the evidence before the Board and is provided to the applicant prior to the hearing. The investigator will recommend if a witness is required.
- 5) When all supporting documentation is completed the compensation analyst will prepare a summary of the claim to include a calculation of loss of income.
- 6) The Compensation Analyst then determines if the claim can be decided by the Board on the basis of documentary evidence only. If that method is appropriate an offer is sent to the applicant who is asked to respond within 21 days. A notice is also sent to the offender except in cases of sexual assault, child abuse or domestic violence.
- 7) If no witness is required and neither the applicant nor the offender wish to appear at an oral hearing, then the claim is scheduled before a one Board Member panel. If the applicant is unhappy with the one member decision, he may within 15

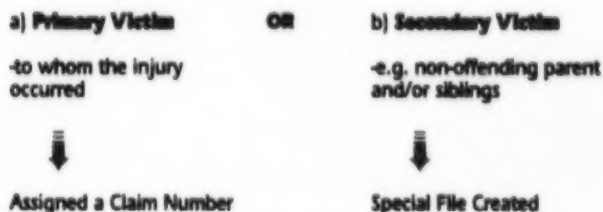
days of receiving the decision, request the decision be reviewed by an independent two member panel.

8) Claims that go to an oral hearing are heard by a two member panel. At a hearing the applicant may have legal representation and produce witnesses in support of the case. Decisions can only be appealed on a question of law to Divisional Court.

9) All decisions are in writing in the form of a Board Order, a copy of which is forwarded to the applicant with the award.

STEPS IN PROCESSING A CLAIM IN BRITISH COLUMBIA:

1) An application is received and assigned a file number by the Registration Clerk who decides if



2) An application is given to Steno who obtains all requested information as indicated by the Sr. Adjudicator who then completes a Preliminary Review and decides if the application should be assigned directly to an adjudicator, the staff doctor or an Investigator.

Most applicants receive care from their own physicians as opposed to a doctor on staff with the Board. If the claimant does request treatment from a staff doctor, the Sr. Adjudicator chooses a physician who is more victim-centred as opposed to a Workers' Compensation orientation which is based on treating claimants as quickly as possible to resolve the claim. The advantage of sending a victim to a WCB staff doctor is that treatment may be given in about 2 weeks. However, the downside to using this system is a lack of safeguards if the wrong WCB doctor is chosen since the CIS utilizes an inherited program and resources.

3) The Investigator and Doctor file a report on their findings. If the claimant wants to provide input to the file before a decision is made he/she must request to view the file. In comparison, a claimant in Ontario has the opportunity to provide input into the preparation of the file.

4) The Sr. Adjudicator assigns the file to an adjudicator (one of 3 staff lawyers) to render a decision. The adjudicator/lawyer does not have legal discretion because he/she is not appointed to the Board but instead is hired as a public servant. A claimant may request an oral inquiry within six months of the adjudicator's decision. This request must be made to the same adjudicator who will also review the file for a second time. If the claimant is still not satisfied with the revised decision, the file may be reviewed by the Appeal Committee consisting of a 3 person WCB Board. This committee hears about 15 to 20 cases a year. Committee members are poorly trained and approach cases with a WCB bias. Therefore, they often render inappropriate decisions.

If the claimant does not agree with the decision of the Appeal Committee, the file is then reviewed by a panel of Commissioners of the WCB who have proven in the past to be more knowledgeable about victim issues.

A criticism of the CIS is that claimants do not hear from the Board except for a few form letters from the time the application is filed to point of decision. (Although the CIS has decreased the processing rate of application from 1 year to 6-8 months.) In contrast, Ontario applicants believe they are receiving full attention from the state due to their involvement in providing input at the investigation and hearing stages of the process.

PROCESSING A CLAIM IN CONNECTICUT:

- 1) An application is received and assigned to a Claims Examiner. Within 10 working days of its receipt the applicant is notified of his/her rights as a crime victim, and a copy of the police report is requested.
- 2) The Claim Examiner then begins his/her examination by verifying the information contained on the application form. The Examiner's objective is to develop a clear picture of the applicant's injuries and losses. If, however, the Examiner cannot make such a determination, the file is given to the Senior Examiner to prepare a Summary Sheet for the Commissioner to evaluate.
- 3) Only one Commissioner is required to render a decision on the claim. If the claimant agrees with the preliminary determination then the case is closed but if, however, the claimant disagrees a Formal Hearing may be held with all three Commissioners.
- 4) At the Hearing the applicant may be represented by an attorney and may present evidence and produce witnesses to support his/her position.
- 5) The applicant may appeal the Commission's final decision to the Superior Court of the Judicial District of Hartford-New Britain.

PROCESSING A CLAIM IN NEW JERSEY:

1) An application is received and assigned to an Investigator to verify information. As part of the verification procedure, the claimant may be required to undergo an impartial medical evaluation by a doctor chosen by the Board and at the Board's expense. After the investigation has been completed, the claimant will receive a written summary of the information. The summary will include either a recommendation to the Board as to what amounts should be awarded or a recommendation that the claim be denied and the reasons for such denial.

In comparison, Ontario retains Compensation Analysts who put a case together to support the victim and Investigators who are ex-policemen who investigate ss. 17(1) and (2) aspects of the case (e.g. contributory behaviour and reasonable cooperation). Investigators in New Jersey do not get involved with police investigations whereas Ontario investigators conduct their own investigations if the police inquiry is not sufficient. Board Investigators and Compensation Analysts in Ontario do not submit recommendations but instead prepare two documents which present both sides of the claim.

3) The claimant is given 20 days from the date of the receipt of this recommendation to advise the Board, in writing, whether he/she accepts or rejects the recommendation. If the claimant rejects the decision, he/she is entitled to a hearing before the Board. At the hearing the claimant has the opportunity to submit proof in support of the claim.

COORDINATION WITH OTHER VICTIM SUPPORT SERVICES

Ontario - Presently, there are many victims' services and organizations available to victims in Ontario. Although a 'skeleton' structure exists for victim support services throughout Ontario, there is a lack of universal access to all services. Furthermore, these services do not reflect the multi-cultural mosaic of Ontario nor do they entirely address fundamental needs such as the provision of services in different languages or physically accessible locations.

New Jersey - New Jersey's multi-disciplinary approach to victim services is vastly different from Ontario's ad hoc approach. The VCCB operates an in-house Victims Counselling Services Unit which assesses the needs of innocent victims of violent crimes and their families and makes referrals to state wide resources. The unit consists of an Acting Director, 2 counsellors, 2 clerical workers, 1 hotline and data entry operator, and a pool of volunteers and college interns.

The Counselling Unit serves as an intake unit. When claim applications are received, they are screened, entered into the computer, assigned a claim number, given a crime code, and an investigator is assigned according to the county of incidence. A file is prepared and forwarded to the investigative unit to be processed.

If a claimant requests counselling, staff perform a needs assessment and refers the claimant to appropriate clinicians. Once the initial psychological evaluation is received, the report is reviewed and discussed with a Commissioner to seek approval for the recommended treatment. Cases continue to be monitored and counselling bills processed until the treatment is completed.

The unit also maintains the VCCB's 24 hour, toll-free Emergency Hotline. Statistics prepared by the unit in 1990, recorded a total number of 2,145 phone calls, of which the three largest groups of crimes reported were assault (782 calls), child abuse (392 child abuse), and sexual assault (244).

In addition, the unit serves as a liaison with victim/claimants, therapists, prosecutor's offices, Victim/Witness units and other victim assistance programs. Outreach has also been done through TV, brochures, community seminars, and pilot projects. Training is provided to social workers and hospital workers to fill out applications correctly to expedite process.

The benefit of this Unit is that it provides assistance to all victims whether they are "innocent" or not. This process, however, has been criticized for being too cumbersome and in need of a more mainstream approach to reduce paperwork and improve the approval process of applicants.

Connecticut - Out of the three jurisdictions studied, Connecticut is the most progressive in terms of providing victim-centred services. The COVS operates a multi-faceted Victim Assistance Program which includes:

- 1) Court-based Victim Advocates
- 2) Victim Services Coordinator Program
- 3) A Homicide Survivor Program
- 4) Contracts with Service Providers

Victim advocates assist victims in the court and ensure that victims are heard prior to sentencing (eg. victim impact statements, obtaining restraining orders). Advocates service victims of "violent" crimes whereas Victim Services Coordinators service less serious crimes. Coordinators also spend all of their time in court compared to Advocates who give and receive training about victim issues through participation in seminars with community groups, police departments, etc.

Services for families of Homicide Victims are available in 10 districts in the state which are divided equally between the Assistant Manager of the Program and another staff member. Service is available regardless of the "innocence" of the victim. The Assistant Manager is also the Supervisor and conducts Outreach by:

- identifying victims through the newspaper and receiving calls from police
- asking for the next of kin
- calling the State Attorney's Office to get permission to proceed
- ascertaining who signed off for the body and advising the family of the deceased that information and counselling sessions are available

-
- visiting the home and conducting a needs assessment
 - assisting in the completion of a compensation form

If an arrest is made, the survivor is referred to a Victim Advocate who meets with the prosecutor and the victim to discuss case proceedings. The pending caseload per advocate ranges from 75 to 300 cases. The COVS also enters into contractual agreements or partnerships with local groups to supplement in areas where there is no court-based Victim Advocate.

The future vision of the Commission is to become an umbrella organization for all victim services in the State including the reallocation of all funding through the Commission. If the COVS succeeds in this venture, then only 25 percent of its activities will be related to compensation.

British Columbia — Similar to Ontario, the British Columbia Board does not house any victim services or make referrals to other victim organizations. There is, however, a Victim Assistance Program, which is a jointly administered program by the Ministries of the Attorney General and Solicitor General. The program's goal is to ensure victims of crime are given the information and help they need to deal with the justice system and cope with the personal impact of the crimes. To accomplish this, the program funds justice-related victim assistance services delivered through community agencies, police detachments, Crown Counsel and probation offices. The Program also funds the operation of the toll-free Victims Information Line — 1-800-VICTIMS — which provides many victims with their first line of information and direction towards getting help.

APPENDIX "C" - LISTING OF PRIVATE, NON-PROFIT AND GOVERNMENT SPONSORED VICTIM SERVICES AND PROGRAMS IN ONTARIO

NOTE: There are too many private and non-profit victim services/ organizations to be included in the list below. For a more comprehensive listing, refer to "Directory -Service for Victims of Crime," Canadian Criminal Justice Association, 1989.

I. ONTARIO JOINT WIFE ASSAULT PREVENTION INITIATIVES - ONTARIO WOMEN'S DIRECTORATE (OWD)

In 1983, the Family Violence Unit was established within the OWD with a mandate to take the lead role in developing government initiatives on domestic violence against women as well as a public education campaign on the issue. The initiatives which were developed are co-ordinated by the Interministerial Committee on Services Related to Wife Battering. The OWD chairs this Committee.

A. ENFORCEMENT INITIATIVES -

-designed to improve the capacity of the system, to investigate and successfully prosecute cases of wife assault, and to provide effective correctional programs for convicted offenders.

INITIATIVES	MINISTRY
1. Police Training Program	Solicitor General
2. The Victim Crisis Assistance & Referral Services	Solicitor General
3. Justice System Data Collection	Solicitor General
4. Designed Wife Assault Coordinator Program	Attorney General
5. Victim/Witness Assistance Program	Attorney General
6. Emergency legal advice Program for Wife Assault	Attorney General / (Legal Aid)
7. Male batterer Programs	Correctional Services

8. Staff Training Program

Correctional Services

B) FAMILY-FOCUSED SUPPORT SERVICES

9. Counselling Programs

Ministry of Community and Social
Services (M.C.S.S.)

10. Child Support Workers

M.C.S.S.

11. Shelter-Based Support Services

M.C.S.S.

12. Housing Programs

Ministry of Housing

13. Information provided to
training institutions

Ministry of Skills Development

C) PREVENTION/EDUCATION PROGRAMS

Broadly-based prevention/education programs to disseminate the message that wife assault is a crime and for bringing about the changes in attitude needed for long-term change on this issue.

14. Mass Media Public Education

O.W.D. Campaign

15. Local Community Public
Education Grants

O.W.D.

16. Grant Programs to assist
social services agencies to
develop resource materials
and training programs

M.C.S.S.

17. Grant Program to promote
the training of health
professionals

Ministry of Health

18. Educational Programs in Schools

Ministry of Education

19. Development of a Protocol for
school boards

Ministry of Education

20. Community-based cultural
interpreter services and
intercultural training

Ministry of Citizenship

-
- | | |
|---|---|
| 21. Grants to Northern and Native communities | Ministry of Northern Development and
Ministry of Citizenship |
| 22. Grants provided through ongoing interministerial research committee | O.W.D. |
| 23. Service Needs Assessment for women with disabilities | O.W.D. / M.C.S.S.
/ Office for Disabled Persons |

II. COMMUNITY BASED CORRECTIONS PROGRAMS - MINISTRY OF CORRECTIONS

A complete range of services are provided by means of fee for service contracts with appropriate non-profit community agencies such as the Salvation Army, Elizabeth Fry and John Howard Societies, etc.

A) COMMUNITY CORRECTIONS

Community Residential Centres and Agreements
Young Offender Open Custody Residences
Community Service Orders
Restitution/Compensation
Fine Option Programs
Victim Offender Reconciliation Programs
Employment Literacy/Lifeskills Programs

B) TREATMENT SERVICES

Substance Abuse/Driving While Impaired Programs
Family Violence Intervention Programs
Shoplifting Programs
Counselling Programs
Specialized Young Offender Programs
Anger Management Programs

C) OTHER PROGRAMS

Alternative Measures
Metro Toronto Victim Services
Bail Verification and Supervision Programs
Native Programs
Multicultural Programs
Volunteer Programs

III. INCOME AND FAMILY SUPPORT UNIT - MINISTRY OF COMMUNITY AND SOCIAL SERVICES

The objectives of the Unit are,

- to assist in providing stability within families and the community
- to encourage the independence of individuals

A staff compliment of 7 Program Supervisors, 1 Program Coordinator and 1 Employment Liaison Officer provide services to 250 agencies across the Toronto area.

Major Program Areas include:

Family Benefits; Vocational Rehabilitation Services; Sole Support Mother's Program; Legal Aid Assessment; Family Court; Halfway Houses; Hostels and Shelters; Literacy; Community Neighbourhood Support Services; Purchase of Counselling (Municipal and Ministry); Credit Counselling; Multi-Service Centres; Community Youth Support; GWA - Cost of Administration; Employment Programs; Family Violence/Sexual Assault; Housing Initiative; and Drop-In.

IV. OTHER PROGRAMS:

MINISTRY OF THE ATTORNEY GENERAL

1. Criminal Injuries Compensation
2. Designated Domestic Assault Coordinator - at least one prosecutor in each Crown Attorneys' Office has been designated to coordinate the prosecution of domestic assault cases.
3. Designated Child Abuse Coordinator - at least one Crown Attorney in each office has been designated as a Coordinator for child abuse prosecutions.
4. Designated Sexual Assault Coordinator - at least one Crown Attorney in each office will be designated as a Coordinator for sexual assault prosecutions.
5. Legal Aid Plan - victims of wife assault may apply to obtain a legal aid certificate for information on civil remedies and criminal justice system.

MINISTRY OF THE SOLICITOR GENERAL

1. Sexual Assault Centres - core funding to 21 Rape Crisis/SAC Centres and the Ontario Coalition of Rape Crisis Centres plus funding to establish 10 new centres to support crisis and long term counselling and for outreach to

immigrant and racial minority women, aboriginal women, women with disabilities and rural women.

2. Specialized police training and public forums on issues related to sexual assault.
3. Specialized police training, public education and community forums regarding wife assault and victim assistance.

MINISTRY OF HEALTH

1. Sexual Assault Centres in Hospitals - emergency care includes medical care, crisis counselling and collection of evidence if requested.
2. Community Counselling Programs - for victims of sexual assault and victims of child abuse.

APPENDIX "D" - GLOSSARY OF TERMS

Balance of Probabilities - a test which weighs evidence according to whether it is likely that an event actually happened.

Compensation - money given to make up for financial loss, or physical or emotional injury, usually provided through a provincial criminal injuries compensation board.

Disempowered - taking away of strength and/or control, or never having strength and/or control.

Empowered - enabled to have a measure of strength and/or control.

Gender Neutral - not pertaining to either gender, for example, terminology that does not designate either sex. Predominantly, this term takes 'maleness' out of words, e.g., a "firefighter" rather than a fireman.

Pain and Suffering - unpleasant sensation caused by an injury and the endurance of this distress.

Plea Bargaining - Negotiations between the defence counsel and the Crown Attorney concerning the charges against the accused, and the pleas of the accused. The Crown may accept a guilty plea on a lesser charge instead of incurring the expense, uncertain outcome and other problems of a trial.

Pecuniary loss - loss of money or something of monetary value.

Preponderance of Credible Evidence - believable statements or facts which outweigh all others.

Probation Order - a court order which is part of the sentence which places restrictions or requirements on an offender. Wilful failure to comply with the terms of a probation order constitutes a new criminal offence.

Primary Victim - first or original person who suffers injury or loss.

Restitution - a court order for the return of property which has been taken unlawfully from its owner; the offender must pay the victim compensation for readily ascertainable losses.

Secondary Victim - person who suffers injury or loss as a result of the experience of the primary or first victim.

Self-identify (as a victim) - an individual's declaration that he/she is a "victim" which should invoke a government response to treat that individual as a "victim."

Sequela - morbid condition or symptoms following upon some disease or injury.

Similar Fact Evidence - the same proven past behaviour of an individual which links that person to an event which has allegedly happened.

Tripartite Criminal System - criminal proceedings in which the state, the accused and the victim are parties in the process.

Validation - to verify an individual's experience.

Victim - a person against whom a crime has been committed.

Victim-Centred - an institutional approach to the treatment of victims of crime in which legal processes and procedures revolve around the victim's interests.

Victimization - act of causing discomfort or suffering to an individual or group.

APPENDIX "E" - PROPOSED LIST OF VICTIMS' RIGHTS AND GUIDING PRINCIPLES AS FORMULATED BY "P.R.I.D.E"

Victims have the right to be informed, the right to be present, and the right to be heard at every stage of the judicial process.

We work for victims, and as such believe in an advanced concept of victim rights.

While some of these rights may sound new, ten years from now they will be law, if we start working for them now.

1. The right to notification...including the right to police reports, autopsy reports, notification of arrest, notification by the crown attorneys office when the case is to be heard and to whom it is assigned and to be informed at every stage of the process.
2. The right to appear in court when charges are laid and to be informed about the meaning of the charges and the elements required for conviction.
3. The right to testify when bail is set.
4. The right to vigorous prosecution, including the right to hire a private prosecutor if the crown is unable to do so for whatever reason.
5. The right to comment on requested adjournments. Judges would be required to state why a case has been put over.
6. While there should be no plea bargaining, we want the right to have input into it or when sentence bargaining takes place.
7. The right to have time off from employment, without penalty, to attend court.
8. The right to be present during all phases of the trial.
9. The right to be prepared as an adequate witness, with information about rules of evidence, cross examination, objections and hearsay.
10. The right to be provided with a separate waiting area apart from defence witnesses.
11. The right to present a victim impact statement prior to sentencing.

12. The right to truth in sentencing, whereby parole may not be granted prior to the expiration of an established period of time.

13. The right to ask for an appeal of overly lenient sentences.

NOTE: ITEMS NO. 4, 6 AND 8 ARE PROPOSED GUIDING PRINCIPLES AND THE REMAINING ITEMS ARE PROPOSED VICTIMS' RIGHTS.

THIS IS ONLY ONE MODEL WHICH MAY BE UTILIZED FOR VICTIMS' RIGHTS AND GUIDING PRINCIPLES.

SOURCE: P. R. I. D. E. (People to Reduce Impaired Driving Everywhere)

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APPENDIX "G" - AGENDA TOPICS NOT DISCUSSED AT ADVISORY BOARD MEETINGS

1. Who has the best means to access victims? Police? Community Victim assistance services?, paralegal or legal counsel? court victim/witness?
2. How should accessibility to the CICB's library be improved?
3. What should the criteria be for hiring and training CICB staff and Board members?
4. What is the Board currently doing in its outreach programme?
5. Discussion of Pain and Suffering awards to spouses and dependants of deceased victims.
6. Need for professional reports to validate emotional trauma of applicants. How much proof should victim have to produce?
7. Review of decision reporting system.
8. Consideration to make UIC payments non-deductible from award.
9. Discussion of beyond reasonable doubt.
10. Discussion of Section 16 (1) of Act (eg. compensation not dependent on a conviction).
11. Discussion of Board authority to compensate for clothing, eyeglasses, etc.
12. Discussion re: causally related deaths and the conduct of the applicant.
13. Should the Board serve the offender and enter into subrogation?
14. Should the Board compensate police officers and inmates?
15. Cost effectiveness of duplicitous services?
16. Should the Board compensate battered women who wish interim payments to establish themselves in another home?
17. What is the place of the CICB in a comprehensive disability program?
18. Discussion of the integration of CICB benefits with other compensation programs.